COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATION & ENERGY

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Investigation by the Department on its own motion)

as to the propriety of the rates and charges set forth)

in the following tariffs: M.D.T.E Nos. 14 and 17,) D.T.E. 98-57

filed with the Department on August 27, 1999, to)

become effective on September 27, 1999, by New)

England Telephone and Telegraph Company d/b/a)

Bell Atlantic – Massachusetts.)

_____)

REPLY COMMENTS OF

BELL ATLANTIC-MASSACHUSETTS

Bell Atlantic-Massachusetts ("BA-MA") submits this reply to comments filed by other parties concerning BA-MA's April 21, May 17 and May 19, 2000, Compliance Filings (collectively referred to as the "Compliance Filings") in this proceeding.

BA-MA has complied fully with the Department's directives in its March 24, 2000 Order in this Docket ("March 24th Order"), the Federal Communications Commission's ("FCC") rules, and the Telecommunications Act of 1996 ("1996 Act"). Similarly, the cost studies included in the Compliance Filings are reasonable, forward-looking, and consistent with the Department's approved TELRIC methodology. Furthermore, to the extent that BA-MA has not made changes to its tariff regarding subjects addressed in its pending Motion for Reconsideration of the March 24th Order, it has done so to maintain the status quo and to avoid the possible administrative confusion that would arise should these changes be made prior to the Department's decision on that Motion. Following the Department's decision on the Motion, BA-MA will revise the tariff to conform to the Department's rulings.

The parties' comments fall into four general categories: (1) claims suggesting that evidentiary proceedings are necessary to address new tariff provisions proposed by BA-MA in the May 17th and May 19th Compliance Filings; (2) claims that BA-MA's April 21st Compliance Filing fails to comply in certain respects with the Department's March 24, 2000 Order; (3) requests for clarification of certain provisions BA-MA filed in compliance with the March 24th Order; and (4) parties' requests that the Department consider new issues.

DISCUSSION

BA-MA DOES NOT DISPUTE THAT ADDITIONAL PROCEEDINGS ARE APPROPRIATE TO DEVELOP AN EVIDENTIARY RECORD

WITH RESPECT TO NEW TARIFF OFFERINGS AND COSTS

A. May 17th Compliance Filing

BA-MA's Compliance Filings are consistent with the Department's orders, FCC rules, and the 1996 Act. Specifically, BA-MA's May 17, 2000, filing provides terms for CLECs to collocate at Remote Terminal Equipment Enclosures ("CRTEE") and was filed to comply with the FCC's Third Report and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98, adopted September 15, 1999, and the Supplemental Order, adopted November 24, 1999. The filing also addresses the Department's directive in the March 24th Order that BA-MA file arrangements for CLEC collocation at remote terminal locations. The Department has not previously addressed the terms of this tariff, and several parties argue that the Department should suspend and investigate the tariff. See e.g., RL/Covad Comments at Section IV, AT&T Comments at Section II, WorldCom Comments at 6-9.

BA-MA is not opposed to the Department conducting a thorough inquiry with respect to BA-MA's CRTEE tariff, as it has in other Phases of this case, which would include the filing of testimony, discovery, hearings, the examination of witnesses, and final briefs. Indeed, it seems clear that the Department could not decide the various issues raised by the parties solely on the basis of written comments. The Department should proceed as soon as practicable to adopt an aggressive procedural schedule to assure that this matter is resolved expeditiously.

B. May 19th Compliance Filing

In its May 19th Compliance Filing, BA-MA filed various cost studies as required by the March 24th Order relating to adjacent on-site collocation, Enhanced Extended Links, Site Survey Report fees, virtual collocation, ICB pricing, and retention rates for billing and collection of information services calls. In addition, as required by the March 24th Order, BA-MA proposed intervals for OC-3 and OC-12 interoffice facilities. See Attachment A, May 19th Compliance Filing, a copy of which is attached as Exhibit 1. Various parties, including RL/Covad and AT&T argue that there are a number of issues in the May 19th Compliance Filing that merit further investigation. E.g., AT&T Comments

at 11-12; RL/Covad at 17-21. As discussed above, BA-MA does not object to the Department investigating this filing since it has not previously addressed the specific matters contained in the filing. As noted above, the Department should promptly adopt a procedural schedule that will provide for a thorough yet expeditious resolution of the issue.

II. BA-MA'S EXCLUSION OF CERTAIN TARIFF CHANGES FROM

ITS APRIL 21st COMPLIANCE FILING WAS APPROPRIATE

On June 2, 2000, the Department issued an order that addressed, among other things, BA-MA's Request to Defer its obligation to file compliance tariffs for issues that were the subject of BA-MA's Motion for Reconsideration. DTE 98-57 (June 2, 2000

Order) ("June 2nd Order"). The Department determined that BA-MA's motion to defer compliance constituted a request to stay portions of the March 24th Order pending the resolution of BA-MA's Motion for Reconsideration and ruled that such a stay was appropriate for all items for which BA-MA was seeking reconsideration, with one exception. Therefore, BA-MA is currently under no obligation to, and did not file tariff proposals for those issues that are the subject of its pending motion. BA-MA will, of course, make any subsequent changes to Tariff No. 17 in accordance with the Department's decision on the motion. Despite the Department's ruling, a number of parties maintain that BA-MA's failure to include terms relating the reconsideration issues constitutes grounds for rejecting BA-MA's compliance filing. As discussed below, these arguments should be rejected.

A. Off-Site Adjacent Collocation

RL/Covad argue that BA-MA's Off-site Adjacent Collocation offering contained in the May 19th Compliance Filing is deficient because it fails to fully implement the Department's March 24, Order. RL/Covad Comments at 18. In addition, RL/Covad suggests specific language it believes BA-MA should include in the tariff regarding off-site adjacent collocation. Id. at 18-19. RL/Covad's arguments are premature. As noted in Attachment B to the April 21, 2000 Compliance filing, the issue of off-site adjacent collocation is subject to BA-MA's Motion for Reconsideration. See Motion at 10; April 21, 2000 Compliance Filing, Attachment B (attached as Exhibit 2). Accordingly, in light of the Department's June 2nd Order, there is no basis for considering this issue raised by RL/Covad until the Department rules on BA-MA's motion.

B. Microwave Collocation

AT&T and WorldCom take issue with specific provisions relating to Microwave Collocation contained in BA-MA's April 21st Compliance Filing. Specifically, AT&T argues that BA-MA "inexplicably" failed to eliminate a provision in Tariff No. 17 that permits BA-MA to require a CLEC multiplexing node or transmitter/receiver equipment be housed in a separate room or cage. In addition, WorldCom argues that, despite the fact that the March 24th Order directed BA-MA not to distinguish between business and non-business hours regarding collocators' access to equipment, BA-MA retained such distinction in its compliance filing. As noted in Attachment B to the April 21, 2000 filing, both of these issues are subject to BA-MA's pending Motion for Reconsideration. Accordingly, in light of the Department's June 2nd Order, AT&T's and WorldCom's arguments with respect to this issue are premature. See Attachment B, April 21st Compliance Filing; Motion at 6. There is no basis for the Department to consider AT&T's and WorldCom's claims until it rules on BA-MA's Motion for Reconsideration.

C. Virtual to Cageless Conversions

In its comments, RL/Covad attempt to reargue their position that the Department should immediately order BA-MA to allow conversions of existing virtual arrangements to cageless arrangements. RL/Covad Comments at 3-4. While acknowledging that the Department's June 2nd Order stayed BA-MA's obligation to provide such connections, RL/Covad's comments essentially requests that the Department "modify" its June 2nd Order and direct BA-MA to file tariff language on this issue. Id. at 4.

The Department should not take the action suggested by RL/Covad for two reasons. First, RL/Covad's request for modification is procedurally flawed and fails to provide any new information that would justify modification of the June 2, 2000 Order. This issue was thoroughly briefed by the parties in this proceeding, and the Department is in the process of considering this issue in the context of BA-MA's pending Motion for Reconsideration. Moreover, the Department not only held that a stay was appropriate in light of BA-MA's pending motion, but also that, in light of the possibility that the Department could revise its conclusions after its review of the pleadings filed in connection with that motion, the "CLECs' proposal to require BA-MA to make …collocation services available, subject to true-up and revision, is not practical." June 2nd Order at 10-11. In addition the Department ruled that "the

complex legal issues, including the interplay between state and Federal authority…" themselves warrant a stay in this instance. Id. at 10. Nothing has changed since the Department issued that ruling. The Department should reject RL/Covad's invitation to decide prematurely the issue of virtual to cageless conversions.

D. Use of BA-MA Cable Racking

WorldCom argues that Tariff No. 17 should be modified to include provisions permitting CLECs to use existing BA-MA cable racking when interconnecting between collocation cages in BA-MA central offices. See WorldCom Comments at 5.

As noted in Attachment B to the April 21, 2000 filing, this issue is subject to BA-MA's pending Motion for Reconsideration. Accordingly, in light of the Department's June 2, 2000 Order, WorldCom's arguments with respect to this issue are premature. See Attachment B, April 21st Compliance Filing; PFR at 16. There is no basis for the Department to consider WorldCom's claim until after it rules on BA-MA's Motion for Reconsideration.

E. Host/Guest Responsibility

WorldCom also argues that a provision in Tariff No. 17 addressing the respective responsibilities of guest/hosts in shared collocation arrangements should be modified. As noted in Attachment B to the April 21, 2000 filing, this issue is subject to BA-MA's pending Motion for Reconsideration. Accordingly, in light of the Department's June 2, 2000 Order, WorldCom's arguments with respect to this issue are premature. See Attachment B, April 21st Compliance Filing; PFR at 14. There is no basis for the Department to consider WorldCom's claim until after it rules on BA-MA's Motion for Reconsideration.

F. Commingling and Special Access

AT&T argues that BA-MA's April 21st Compliance Filing fails to comply with the March 24th Order because it includes specific provisions regarding "significant local use" in connection with conversions of Special Access services to Enhanced Extended Link ("EEL") arrangements. AT&T Comments at 5-6. As noted in Attachment B to the April 21, 2000 filing, this issue is subject to BA-MA's pending Motion for Reconsideration. Accordingly, in light of the Department's June 2, 2000 Order, AT&T's arguments with respect to this issue are premature and without merit. See Attachment B, April 21st Compliance Filing; PFR at 24. There is no basis for the Department to consider WorldCom's claim until after it rules on BA-MA's Motion for Reconsideration.

Moreover, in a recent order clarifying its November 24, 1999 "Supplemental Order" the FCC clarified the meaning of the "significant amount of local exchange service" measure which must be met by a CLEC to convert a Special Access service to an EEL arrangement. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 (rel. June 2, 2000) ("FCC Clarification Order"), at ¶¶ 21, 22, and 23. The FCC largely adopted the measure Bell Atlantic had proposed in a February 28, 2000, ex parte filing. That same measure is currently included in BA-MA's Tariff No. 17. The FCC held that the language from the February 28, 2000, Letter is a "reasonable compromise proposal under which it may be determined that a requesting carrier has taken affirmative steps to provide local exchange service to a particular end user and is not seeking to use unbundled loop-transport combinations solely to bypass tariffed special access service." Id. The Department should take administrative notice of the FCC's Clarification Order in connection with its review of BA-MA's pending Motion for Reconsideration. This order reaffirms that BA-MA's proposed language regarding this issue (Part B, Section 13.3.1.A) is reasonable and that the Department should approve the tariff language in its current form.

G. Rearrangement of Facilities

AT&T took issue with the fact that BA-MA has filed to revise the language in its tariff to include a mechanism for CLECs to submit formal comments and suggestions on planned network changes and facilities upgrades prior to their implementation. As AT&T noted, in seeking reconsideration of the Department's March 24th Order on this issue, BA-MA did, in fact, suggest that the FCC rules would be an appropriate process to utilize. See Motion at 20-22. However, BA-MA did not change its tariff to reflect this suggestion because the Department has not yet ruled on the pending motion. Since AT&T suggests precisely what BA-MA has proposed, the Department should grant BA-MA's motion and direct that the FCC rules be referenced in the tariff.

III. MISCELLANEOUS ISSUES

A. The Department Should Reject RL/Covad's Proposed Modification of Part E, Section 2.2.2.C. of BA-MA's April 21st Compliance Filing

RL/Covad misconstrue the Department's March 24th Order in arguing it rejected BA-MA's three-year forecasting interval in favor of a case-by-case space reservation policy for BA-MA. RL/Covad Brief at 5-6. To the contrary, the Department directly addressed this issue in its March 24th Order that "it is inappropriate to shorten the three-year policy at this time." March 24th Order at 46. In reaching this decision the Department expressly recognized that BA-MA is not similarly situated with CLECs with respect to the issue of space reservation and that BA-MA's needs in terms of space incorporate broader interests than a CLEC. The Department stated:

[B]ecause an ILEC, such as Bell Atlantic , and a CLEC are not similarly situated, we find that limiting Bell Atlantic's own space reservation policy to six months, in order to match the time period after which Bell Atlantic may initiate space reclamation proceedings against CLECS, would subject Bell Atlantic to terms for space reservation that are less favorable than those that would apply to other telecommunications carriers seeking to reserve space for future use. More precisely, Bell Atlantic's needs in terms of space reservation of space incorporate broader interests than a CLEC reserving space for itself since Bell Atlantic must consider universal service obligations as well as growth of the network infrastructure to accommodate both Bell Atlantic and CLEC needs.

The Department further stated:

Since we find no evidence to support a time limit that is more than six-months and less than three years, the Department concludes that it is inappropriate to shorten the three-year policy at this time.

Id. Where, as in this case, the Department has not shortened BA-MA's space reservation period, the inclusion of this language in the tariff is appropriate and should remain. To the extent the Department did limit BA-MA's space reservation policy, it was limited to those central offices in which space exhaust is an issue. Id. at 46-47. To clarify this point, BA-MA does not object to additional language in Section 2.2.2.C to address such instances. BA-MA proposes that the following language be added: "In central offices where space exhaust is an issue, the appropriateness of BA-MA's reservation of space will be evaluated on a case by case basis." The Department should reject RL/Covad's proposed changes to Part E, Section 2.2.2.C, and include the language proposed by BA-MA.

The Department Should Reject RL/Covad's
Attempts to Further Modify Part E, Section 1.1.2.A

RL/Covad propose several modifications to Part E, Section 1.1.2.A which provides that BA-MA the physical and virtual collocation arrangement implementation interval

is 76 business days for all standard arrangement requests which were properly forecast six months prior to the application date. RL/Covad argue that linking the 76-day interval is "inappropriate" and argues that the six month forecast requirement should be eliminated. The Department should reject this argument. First, the cited tariff language is identical to the language addressing this issue in NY PSC 914, Section 5.1.4 which includes language tying the 76 business day interval to the provision of a forecast. Indeed, the Department expressly held in its March 24th Order that "restrictions that apply to New York's 76-day provisioning intervals for physical collocation should be adopted and pointed out that at least one CLEC—WorldCom, had found these restrictions acceptable in order to receive a 76-day provisioning interval. March 24th Order at 73-74 (citing Exhs. DTE-99 and 100). Moreover, there is no support for RL/Covad's argument that BA-MA would use the required forecast as an excuse for delay. To the contrary, the six-month forecast is necessary to assure that BA-MA can adequately meet the collocation needs of all CLECs within the required time intervals. Accordingly, the Department has already decided this issue and should reject RL/Covad's attempt to have the Department modify its ruling.

The Department should also reject RL/Covad's attempt to modify the tariff to include a 90 business-day interval for non-standard collocation arrangements. RL/Covad Comments at 4-5. First, this section has already been subject to litigation, and the Department did not require that BA-MA include such an interval for non-standard arrangements. Nor would such an interval be appropriate given the fact that such arrangements are by definition arrangements with which BA-MA would have little or no experience provisioning. See DTE 17, Part E, Section 3.3.3.A.

There Is No Need for Additional Clarification Regarding Tariff Language Changed By BA-MA in the April 21st Compliance Filing

RL/Covad's suggestion that it requires further clarification with respect to certain language in BA-MA's April 21st Compliance filing before it could submit full comments is specious. See RL/Covad Comments at 6. The very purpose of providing Attachment A to the Compliance Filing was to assist parties in making comparisons to previous versions of the tariff and to facilitate identification of changes to tariff language. BA-MA should not be required to provide any further information in this regard. With respect to Section 2.2.5.L, which previously contained typographical errors, BA-MA corrected those errors in its May 25th Compliance Filing in this docket.

D. The Liability Language Proposed By BA-MA in Sections 1.6.2.A and 1.6.2.B of the Tariff Are Consistent with the Departments' March 24th Order

NAS's suggestion that the liability provisions contained in Sections 1.6.2.A and 1.6.2.B of the April 21st Compliance Filing are inconsistent with the March 24th Order and is without merit. See NAS Comments at 4-6. The Department provided specific guidance with respect to the changes BA-MA should make to these sections and directed BA-MA to file provisions consistent with those directives and expressly recognized that BA-MA's liability should be limited to situations caused by BA-MA's willful misconduct or gross negligence. See March 24th Order at 137-141. BA-MA made the changes specified in that order. The Department should approve BA-MA's proposed tariff language for these sections.

E. There Is No Need For The Department To Alter Its Procedural Rules As WorldCom Suggests

In footnote 4 of its Comments, WorldCom suggests that the Department may wish to consider establishing clear guidelines with respect to the level of information BA-MA must submit in support of proposed charges. See WorldCom Comments at 6-7. BA-MA does not believe that such additional guidelines are necessary because BA-MA is already required to and does file adequate cost support for its tariff offerings. Moreover, there is no basis for WorldCom's suggestion that BA-MA has sought to

introduce delay into this proceeding by failing to support its costs. To the contrary, BA-MA has worked diligently, as have other parties to this proceeding, to address the substantial number of issues in this proceeding as comprehensively and expeditiously as possible. However, should the Department undertake such a revision to its policies, it should provide the parties with notice of its intention and an opportunity for comment.

IV. THE DEPARTMENT SHOULD REJECT PARTIES' ATTEMPTS TO RAISE ISSUES THAT HAVE ALREADY BEEN LITIGATED AND THAT WERE NOT ALTERED IN BA-MA'S COMPLIANCE FILINGS

A number of the comments filed by various parties are directed at provisions of the tariff that BA-MA was not ordered to, and did not alter in its Compliance Filings. For example, in its comments, AT&T raises several issues regarding language contained in Part E, Sections 10.3.3.A (requiring a CLEC to secure a right-of-way from BA-MA in connection with an adjacent arrangement), and 10.3.4.B (addressing signal regeneration expenses). BA-MA was not required by the March 24th Order to make changes to those sections and did not change that language in the Compliance Filings. AT&T's comments are wholly inappropriate in this context, and the Department should reject AT&T's attempt to raise new arguments on issues that have been thoroughly litigated and which the parties had an ample opportunity to address. Indeed, in some instances, language challenged by parties' comments has been in DTE Tariff 17 since it was filed on August 29, 1999. Parties should not be allowed to raise new arguments regarding this language at this point. RL/Covad argues that the Department should order BA-MA to revise section 10.1.1.A of DTE 17 to eliminate the requirement that a CLEC use "Telephone Company approved vendors" when constructing adjacent structures or CEV in BA-MA's central offices in instances where space for physical collocation has been exhausted and proposes alternative language. The Department should not order BA-MA to revise this language. Aside from the fact that that the approved vendor requirement is reasonable and will help protect both BA-MA's facilities, as well as CLEC's, and assure that all required work is done, this language has been in DTE Tariff 17 since August 29, 1999. Since that time, parties to this proceeding have participated in extensive proceedings examining the language of DTE Tariff 17. The Department's March 24th Order did not require BA-MA to remove this language and RL/Covad did not seek modification or reconsideration with respect to this issue within twenty days of that order. See 220 C.M.R. § 1.11(10). Accordingly, the Department should reject RL/Covad to secure such a modification or consideration at this juncture under the guise of comments directed at compliance filings.

PACKET SWITCHING ISSUES SHOULD BE

ADDRESSED IN THE PHASE III PROCEEDINGS

NAS argues that the Department should order BA-MA to file tariff language specifying the terms under which it will provide packet switching as a UNE. This issue is beyond the scope of these proceedings and, is being addressed in DTE 98-57, Phase III. Accordingly, the Department should not address that issue in connection with its consideration of BA-MA's compliance filing.

VI. CONCLUSION

For all of the foregoing reasons, the Department should expeditiously issue a schedule for its investigation of BA-MA's May 17th and May 19th Compliance Filings. With respect to the April 19th Compliance Filing, the Department should take no action with respect to that filing until it has issued its decision on BA-MA's pending Motion for Reconsideration.

Respectfully submitted,

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